

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

BILLY TYLER,

Plaintiff,

vs.

MICHAEL MYERS, Director; and JOHN
DOE, Unknown Officers;

Defendants.

4:22CV3138

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiff Billy Tyler's Motion to Appoint Counsel, [Filing No. 7](#), and the filing docketed as a "Supplement" at [Filing No. 8](#).

On September 20, 2022, the Court ordered Plaintiff to file an amended complaint within 30 days or face dismissal of this action. The Court advised Plaintiff that because he had not indicated whether he was suing Defendants in their individual or official capacities, the Court was required to assume that Defendants were sued in their official capacities. [Filing No. 6 at 3](#); see also *Johnson v. Outboard Marine Corp.*, 172 F.3d 531, 535 (8th Cir. 1999). The Court also advised Plaintiff that a suit against Defendants in their official capacity is considered a suit against their municipal employer, Douglas County. [Filing No. 6 at 3](#). A suit against Douglas County would require allegations that a municipality's policy or custom caused a violation of Plaintiff's constitutional rights. [Filing No. 6 at 4](#); see also *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978); *Marsh v. Phelps Cty.*, 902 F.3d 745, 751 (8th Cir. 2018). The Court warned Plaintiff that his Complaint did not allege that a policy or custom of a government entity caused the alleged violation of his constitutional rights. [Filing No. 6 at 4](#). Nevertheless, the Court granted

leave to amend the Complaint to make such allegations if they could be truthfully and plausibly alleged. [Filing No. 6 at 4](#).

Plaintiff's Supplement appears to be a response to the Court's order granting leave to amend. The Supplement confirms that Plaintiff is suing Defendants in their official capacities. Thus, for the reasons stated above and in the Court's previous Memorandum and Order, the Complaint fails to state a claim upon which relief can be granted. This case will be dismissed without prejudice and Plaintiff's Motion to Appoint counsel will be denied.

IT IS THEREFORE ORDERED:

1. Plaintiff Billy Tyler's Motion to Appoint Counsel, [Filing No. 7](#), is denied;
2. This matter is dismissed without prejudice; and
3. A separate judgment will be entered.

Dated this 5th day of January, 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read "J F Bataillon", written over a horizontal line.

Joseph F. Bataillon
Senior United States District Judge